

## Two CASES Submitted to CONSIDERATION.

1. Of the Necessity and Exercise of a Dispensing Power.
2. The Nullity of any Act of State that Clasheth with the Law of God.

I Publish This Paper, out of a Sense (as Things stand at Present) of what I Owe to the King; To my Religion; To my Country; and to my Self; and would neither Mislead, nor be Misled. If I have Reason on my side, No Good Man will Blame me for what I have done; If I am in an Error, I shall so Gladly submit to be Better Enformed, that No Charitable Man will refuse Lending me his Hand to put me into the Way. Beside, that it will be a Matter of Importance, for those that are, of Another Opinion, to satisfy the World whether I am in the Right, or Not. I speak to the Case of All Governments; i.e. of Government according to the Divine Appointment, and Institution of it, without Any Restriction, that is either Partial, or Local. I have had an Unlucky Hand, and so must Every man Expect to have, that makes so many men his Enemies, as Value a Trimming Interest before an Inflexible Honesty. For want of Better Matter, I am Charged of Late with Contradicting my self, which I am not yet Conscious of, in Any Act, or Syllable, Neither in my Allegiance, or in my Religion, from Fifty years Last past, to this very Day.

R. L. S.

### CASE I. Of a Dispensing Power.

If it be True, that Humane Laws can never come up to All the Ends and Cases of Government.

If it be True again, that where They fall short, there are Certain Fiduciary Powers still ready at hand, in the Foundations of All Governments to Supply the Defect.

And if it be True in the Third Place, that without such an Auxiliary Reserve, Government falls to the Ground, for want of means to Support it: The Inference is Plain and Natural, from the Admittance of These Three Propositions, to the Doctrine of a Dispensing Power.

The Laws of Man are the Work of Frail, and Fallible Law-makers: Or supposing them to be Men of the most Consummated Wisdom, and Integrity; and their Statutes as Extensive, as Civil Prudence, and Precaution can make them: there will be Omissions yet; Change of Interests; Cross and Surprizing Accidents; Necessities Innumerable, and Fresh Matter Every Day Started, to make Work for New Methods, and Expedients. What would become of Government now, under This Incompetency of Humane Constitutions, without taking in Those Fiduciary Powers (which are Wraped up in the Laws of Nature, Equity, and Right Reason) to their Aid?

Those Subsidiary Laws, or Powers, are Everlasting, Universal, Uniform, Steady, Just, Infallible, and All-sufficient: The Authority of them is Unquestionable; the Equity Undeniable; and the Power Irresistible: They are No Other in Effect, than the Affinities, and Impulses of Providence it self, Graven in the Heart of All Reasonable Beings. But in short; If it be by God, that Kings Reign, and Administer Judgment, it will then follow, that All the Prerogatives of Power are as Sacred as the Ordinance it self. They are Sovereign, Inalienable, Ever, and in All Places, the same.

Now taking for Granted, the Imperfections of the One, and the Ample Sufficiency of the Other, to All Intents and Purposes; That Government is of God; and Humane Society the Work of Providence; That God's Vicegerents are Answerable to their Principal for the Care and Protection of the People Committed to their Charge; That it is Impossible for them to Acquit Themselves of their Trust, Duty, and Commission, purely by the Force of Laws of Man's Making, without some Higher Power to Refer to for Relief; And that it is the Office, as well as the Prerogative of the Sovereign to Interpose with his Authority, for the Well-Being, and Safety of the Publick: Taking all This for Granted, I say, the Bare Supposal of so Mortal a Failure, for want of a Dispensing Power, would Imply, either an Oversight, or an Injustice, in the Original Grant, and Command: An Oversight, in the Disproportion of the Means to the End; or an Injustice in Exacting Impossibilities, and requiring from Governors, More then they are able to do. To keep Clear now of so Lewd an Imagination, it must be Honestly Presum'd, that God has not left us without some Appeal from the Infirmities of Mankind: So that I shall now speak a General Word or Two, concerning the Rise, Make, and Obligation of Humane Laws; and what Affinity they Have, or Ought to have, with Laws Divine.

The Great Dictator of Rules and Measures for the Governing of Men in Society, was GOD HIMSELF; and Those First Principles have been Handed down to us, in an Uninterrupted Course of Practice, and Tradition, from their very Institution to This Day, by the Voice of Nature, and by the Universal Assent of All Ages, to the Eternal Equity, and Reason of them. They are of the same Force at This Instant, that ever they were; and so much the Standard of All Political Acts, that they are No further Binding, then as they Conform to this Test. Government, in short, is no more then Right Nature put in Exercise; General Precepts Distributed into Particular Provisions; the Secret Influences of Rectified Reason made Publick, and Digested into Laws. It is the Law of God, in fine, that speaks in the Law of Man; And This Law Paramount, is the Sovereign Guide that Law-makers Ought to Follow. Nor but that Governors, and Legislators have a Liberty of Discretion, in Things Indifferent; but they are Nevertheless Bound up not to Depart from the Equity of the Primary Fundamentals; for No Provision of State must be Admitted in Barr of those Prerogatives.

There will not be much Difficulty, I presume, to Yield the Imperfection of Humane Laws; the Sufficiency of the Laws of Go-

vernment; the Necessity of Government it self, and of a Dispensing Power to Uphold it; Nor, finally, to Grant that All Laws of State are to be Tryed by God's Laws; and that the Use, and Intent of Those Laws of Prerogative is to Supply, or to Correct, what is Wanting, or Amis in the Law of the Constitution. All this must be Acknowledged; for, otherwise, we shall have the Law of This, or That Community set up against the Law of the Universe. Man's Contrivance against God's: Laws that leave us at a Loss, a Thousand Ways, for want of Power, Direction, Due Application, and the like, against Laws that Provide for us in All Instances whatsoever. We have spoken of the Need, and Use of a Dispensing Power; The Next Point in Order will be the Proper Receptacle of it.

If the Dispensing Power be an Essential of Government; where should it be Lodg'd, but in the Common Repository of All the Ensigns of Majesty? for it is Incorporated with the First Principles of Government; and so to be Exerted, from time to time, at the Will and Pleasure of the Supreme Magistrate; with a Saving only, to the Sacred Obligations of Right Reason, and the Indispensable Privileges, and Duties of the Ruling Office. Humane Laws, are, at Best, but the Specification of Particular Duties, drawn from the General Lights, and Precepts of Nature; and recourse must be had in All Cases, to Those Authentick Originals, for the Correcting of Fallacy, or Imperfection. What's to be done, where the Letter of the Law draws One way, and the Conscience of the Prince, Another? He must, of Necessity, Dispense with One of the Two Laws. He is Accountable to God, for the Breach of Trust, if he does not Act, according to his Judgment, for the Good of his Subjects; And the Law of the Land can never Oblige the Sovereign to do any thing contrary to the Law of his Authority, and Commission; which is no more, then Employing the Law of his Prerogative for the saving of a State from the Law of the Land, which, (as it may happen) would Hazard the Ruine of it. But where's the Danger at last, of This same Bug-bear-Prerogative of a Dispensing Power?

The Right, and Practice, (they say) of Dispensing with One Law, lays All the Rest at Mercy. But I am of Opinion rather, That the Want of such a Power lays Government it self at Mercy. And whereas it is Objected, that it lets up Absolute Power under the Cloak of a Dispensation; it does, in Truth, prevent the Introducing of an Anarchy, for fear of Tyranny; Neither is it the Ends of a Dispensation, to Invalidate Humane Laws, but to Uphold the Authority of Laws Divine. Reason of State, and Equity, make All Governments to be Absolute, in Some Cases, and Occasions; and what matters it to Us, Whether This comes by Creation, or by Accident? Briefly, He that Quarrels Government for being in some Respect, Arbitrary, Quarrels God's Providence, for Making it so; and for finding it Necessary so to be: And This Exception strikes at the very Foundations of Power it self. If a Prince cannot Dispense, he cannot Govern, where Necessity is too strong for the Law. His Commission is Positive, and he Acts under a Command, as well as under a Duty. He is, upon his Peril, to Execute the Powers that are Given him, and as much Obliged to Assert his Prerogative against all Usurpations, as not to abuse his Power, to Violence, and Oppression: Or even in case of such an Abuse; a Prince has a Power to do many things that he has not a Right to do; and therefore the Morality of Acting must be Distinguished from the Authority of Governing; for the Character stands Firm, in Despite of the Male Administration.

There is Another Unlucky Mistake too, that's very Rife. [Stay for a Parliament, they Cry, and let those Laws be Repealed, that are not fit to be Continued.] This is the best way certain'y, where the Time, the Quality of the Case, and the Temper of the People will Bear it. But what if the Danger Presses? What if the Delay be Certain Death? and the Disease cannot Wait for a Remedy? The King's Duty never Sleeps; his Authority never Intermits; and he is as much Accountable to Almighty God, for the Exercise of his Function, Out of Parliament, as in Parliament. If YOUR OWN Laws will not do it (says God) make Use of MINE, as you will Answer the Contrary. Shall a Prince say, Lord, I must not Dispense? as if he might Dispense with God's Law, though not with his Own.

And

And then for the *Quality of the Case*; the *Privacies of State*, as the *Manage of Secret Commissions, Negotiations, Intelligences, Counsels, and Intrigues*; These are Affairs, so peculiar to the *Cabinet*, that they are *Wholly Foreign to the Cognizance of a Parliament*; and yet these *Invisible Wheels* are a kind of *Political, Perpetual Motion*; and of *Absolute Necessity* to the *Great Design of Government* it self. There are *Other Cases*, where the *Ground of the Suspension* is only *This or That Particular Emergency*. And in *These Cases*, it often falls out that it may be *Death almost, Not to Suspend, and yet as Mortal to Repeal the same Law*.

And so the *Temper of the People* must be *Allow'd* to go a great way too; when the *Mobile* are *Fill'd* with *Ill Opinions, and Jealousies* of their *Superiors*; as in the *Instance of That Fatal Parliament of Forty One*: And the *Danger of Two Parliaments* since, at *Westminster and Oxford*, where his Late Majesty *scap'd*, very narrowly, the *Dear Experiment of the same Remedy*.

*Well I but 'tis a Temptation*, they pretend, *to the setting up of an Arbitrary Power, to say, that a Prince MAY do't, if he WILL*] Now this is to *Suppose* that *Whoever MAY do't, if he WILL, WILL, do't, if he CAN*; and if it holds *That Way*, there's *Nothing but Oppression and Tyranny upon the Face of the Earth*. For the Prince that has it not in his *Power to Oppress*, has it not in his *Power to Govern*; for he is *Governor*, where he is *Impotent*, and the *Controll* sets up *One Sovereign against Another*.

The *Republicans* insist mightily upon the *Trust*, the *Receptacle*, and the *Possible Abuse* of it: But what now if there be *No Avoyning* of such a *Trust*? What if there never was *any Government* in the *World*? Or if *Humane Society* cannot *subsist WITHOUT* it? What if at the same *Time* that this *Trust* is *Controvorted*, there are a *Hundred other more Dangerous Trusts, Admitted*? That is to say, as to the *Enabling of a Prince to make Slaves of his People*? What if the *Trust*, and the *Power* have *Always been in the same Hands*? And in Conclusion, if it be *Utterly Impossible to secure People against a Possible Abuse*; how *Wild*, and how *Unreasonable* a Thing is it, to raise *Scruples against the Eternal Course of Nature and Justice*!

To speak to the *Matter* as it lies, somewhere or other there must be a *Trust*, and *That Trust* may be *Abused*, whereever it is *Placed*: So that a *Trust* is *Inevitable*. *2ly*. If it never *Was Otherwise*, the *Cafe* is *Universal*. *3ly*. There must be a *Trust* amongst *All Sorts, and Degrees of Men*, in *All manner of Dealings*; and in a *Million of Common Cafes*, where *Life Limb, Liberty, Fortune, Body, Soul, and Good Name*, (perchance) may all be *Concern'd*. There is *No Place*, in *fine*, for the *Offices, either Publick, or Private, of a* *Humane Society*, without it. *What's the Chancery*, but a *Court of Dispensation*, for *Granting Relief in Equity* against the *Letter of the Law*? *Do we not Trust Divines, Surgeons, Physicians, Lawyers, Bankers, Relations, Children, Servants?* Nay, and *so Trust them too*, as in *some Cases*, to *Allow them a certain Latitude of Abating* somewhat of the *Rigour* of their *Commission*: And in a *Word*, there is a *Law of Necessity*, that *supercedes the Obligation of All Our Positive Laws*. Upon the *Main*, we *cannot Live Man by Man*, without *Trusting one Another*: and *Providence* has made *This Trust* to *Necessity*, that we can *have neither Peace, Safety, Converfation, nor Property*, without it: and shall we make a *Greater Diffculty to Trust Governors* with the *Administration of Justice*? Nay, and where *God* has *Entrusted them Beforehand*; for *Kings* are *God's Trustees*, not the *Peoples*. Will *Men* have *no Government at all*, unless they may have *such a Government*, as *God* never made, and which *God* has made *Impossible* ever to *bee*? *Why* *This* *would be to make Every Will and Tom an Umpire of the Controversie*; *Where Every Body is No Body*; and yet *This very Mobile*, must be *Trusted over again*, and find *Their Vouchers* too.

*But 4ly*. Why is so much more *Stress* laid upon *this Single Prerogative*, then upon *All the Rest*, that may do *Fifty times more Mischiefe*? Why are not *People* as much *Affraid of Rapes, Massacres, Robberies, and other Military Violences*, from the *UNDISPUTED Power of the Sword*; as they are of *Tyranny, and Oppression*, from the *Prerogative of the Dispensing Power*? *VVhy not of the [Mint] [Life and Death,] [War and Peace,] for fear of False Money, Protecting Criminals, bringing in Foreign Forces?* *Cyc*. All comes to *This at Last*, that a *Juft*, and a *Gracious Prince*, *VVILL not Misapply his Dispensing Power*; and *He* that would make himself *Wholly Absolute*, can do his *Work*, in *Despite* *on't and without it*.

*5ly*. The *Power*, and the *Trust* are so *Inseparable*, that where there's *no Publique Power*, there's *No Publique Trust*; and where there's *No Publique Trust*, there's *No Publique Power*. What's *Authority*, without the *Right to Judge of the Time, the Cafe, the Measure, &c*? as if the *Multitude* were to *Judge*, and to *Appoint*, and the *Sovereign* only to *Execute*; or, in *Plain English*; to *Depose* *himself*, in a *Resignation* to the *Disfates* of the *People*. Let them once *Prescribe* to a *Prince* what is *Fit* for *Him* to *do*, and they shall soon put it to a *Vote* among *Themselfs*, whether it be *Fit*, or *No*, for *That Person to Govern*. But what *Pretence* have they to *Govern in This Prerogative* more then in *All the Rest*? And how come they to be *Rulers in This Cafe*, and *Subje&ts in All Others*? To *Close This Point*; the *End of Law is Equity*; and where the *Letter of the Law* will not reach *That Equity*, it is to be *presum'd*, that the *Law speaks One Thing, and means Another*: In *This Cafe* it belongs to the *Sovereign*, to *Explain and Execute That Law* according to the *True Intention of it*; The *Equity of it* being the *Rule of Government*.

*6ly*. It cannot be *Imagin'd*, that the *Possible Abuse of Power* (which is *Impossible to be Cleared, or Prevented*), should be *Offer'd* as a *Reasonable Argument* against the *Divine*, as well as the *Political*, and the *Necessary use* of it; for it puts a *Stand to the Sun* in *its Course*; which is all one with a *Stop to the Orderly Motions of Government*.

It is *Objected* once again, *What if the Chief Ruler shall say there is a Necessity where there is None*; and make *That Pretended Necessity, the Ground for his Proceeding at Will and Pleasure*? *Necessities*, they say, are *Notorious*, and carry *Pomp, and Noise* along with them: In *Sea-Breaches, or Conflagrations*, the *Multitude are Witnesses to the Stres*. To which I *Answ*er, that if a *Prince* says there *IS a Necessity where there is None*; *The People*, on the other hand, may say there is *NONE where there IS*; and no *Umpire* at last to *End the Strife*; But, *Rights or Wrong*, the *Former* is a *Sentence of Order and Authority*, upon a *Foundation of Law, and Conscience*; The *Other*, an *Indeterminable License*, in *Opposition to Practice, and Common Sense*; and an *Upstartion*, over and above. *The People* *Judge* by *their Eyes, their Ears, and shortly, by what they See, Hear, or Feel*; but the *Magistrate* reads *Effects* in *their Causes*; and it is both the *Prudence, and Duty* of his *Function to Prevent Mischiefs in the very Seeds and Roots*, before they come to a *Head*.

To *Sum up the Whole now*; If *Government*; The *Rules, Powers, and Measures of Government*, be all of *God*; If *Those Foundations be layed in Right Reason, and Justice, and Communicated to All Mankind, in the very Bowels, and Inflents of Reasonable Nature*; If *Humane Laws fall short of the Ends they were Design'd for*; and *No Means lefts us to supply That Failing*; the *Inference* is, that either *Those Original Lights* are *given us in Vain*; or that *Providence has made a False Reck'ning*, which are *Two Points* that cannot be so much as *supposed*, without the *Highest Indignity to God's Power, and Wisdom*. As to the *Receptacle of this Sovereign Prerogative*, and the *Judgment, Where, When, How, and in what Degree*, it is to *take Place*, the *Order of Nature, and of Government* tells us, that *It is impossible to Vest it in the People, without Confounding Sovereignty with Subjection*.

## C A S E II.

*The Nullity of any Act of State, that Clashes with the Law of God.*

*T*he *Two Cafes above*, are but, Effectually, the *Abstract of Twenty or Thirty Observatores upon the same Text*. I have done with the *Former*, and as to the *Other now*; It is out of Doubt, that all *Those Pretended Laws*, are *Nullities*, that take upon them to *Forbid, what God and Nature Command, or to Command what God and Nature Forbid*. This *Single Position* might serve for a *Full, and a Final Resolution upon This Point*; but having *Touched upon One Particular under This Topique in several Observatores*, (in the *Cafe of Charles the First*) and particularly in my *Late Answer to a Letter to a Dissenter, &c*. I would willingly *Propagate the Opinion*, if it will *hold Water*; and I am as ready to *Relinquish it*, if it will not *Abide the Test*. But however, I shall *recommend it to the Publicque, Once again, in the very same Words*.

In the *Cafe of the Proceedings*, under *Charles the First* against the *Papists*. That *Excellent Prince*, according to all *Reasonable, and Humane Presumption*, lost his *Crown, and his Life*, in *Complement to a Void Act of his Own*, in *pretending to Bar himself the Use, and Service of his Subjects*: As if an *Act of State could Supercede a Fundamental of God and Nature*. I have the *Authority of a Great Man* (*Bishop Sanderson*) to *Back me in the Casuistical Stres* of *This Instance*: [*God* (says he) *bath given to his Vicegerents here on Earth, a RIGHT In, and a POWER Over the Persons of ALL their Subjects, within their several Respective Dominions, even to the spending of their Lives in their Countries Service*; *WHENSOEVER they shall be by Their Authority called thereunto*. *Five Cafes, p. 71.*] Now if they have *These Privileges of RIGHT, and POWER, from GOD*; and *Extending to ALL, and WHENSOEVER, without Exception, either to Time, Number, or Distinction of Persons*: *What Earthly Power shall dare to Contrall This Commission*? And I have *One Word more to Offer now*, (that I have formerly spoken to) which comes a little Closer yet to the Point.

The *Precept of [ Honour thy Father and thy Mother ]* is *undoubtedly of Divine Authority*; and a *Command, of an Immutable, and Indissoluble Obligation*: And it has *Catholique Assent to't*, that it *Extends, as well to our Civil, and Political, as to our Natural Parents*. By *This Law, All Subjects are Bound in Conscience to Attend the Call, and the Service of their Prince*; for the *Precept is Positive*; without *Any Qualification, Limitation, or Condition whatsoever*. The *Question will be Shortly This now*; *Whether Any King, can by any A& of Civil Authority, Disent himself of This Right, over the Persons of his Subjects?* I do not say but he may *Chuse* whether he will *Command them, or Not*; but he *Cannot Discharge his People of their Duty of Obedience*, in case he *Requires their Service*; That is to say; *In any Cafe, which is not Contrary to the Will, and Word of God; No Humane Law Can Absolve them from That Office of Allegiance*: So that in the Conclusion, either *Those Subjects are Clear before God, that serve their Prince, when by him thereunto required, notwithstanding any Law of Man to the Contrary*; or *the Ten Commandments may be turn'd to Waste Paper*; If the *Law of the Land shall Forbid upon a Penalty, That which the Law of God, Commands upon a Penalty*.